18. The method of claim 12, further comprising creating elongated creases along the left and right panels centrally located between the front and back panels and the front panel has a crease proximate the bottom panel to facilitate folding.

REMARKS

The present amendment is in response to the Office Action dated September 20, 2002. Claims 1, 3-5, 7-12, 14-16 and 18 are now present in this case. Claims 1 and 12 are amended.

Claims 1, 3, 4, 7-12, 14, 15 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable by U.S. Patent No. 1,713,341 to Kroemer combined with U.S. Patent No. 318,016 to Onderdonk. The applicants respectfully disagree with the assessment of the prior art and its applicability to the claimed invention. The Office Action relies primarily on Kroemer and relies on Onderdonk as teaching a bag with left and right side panels. Kroemer does disclose a bag with an aperture near a top portion of the back panel. However, when properly considered in its entirety, the reference actually teaches away from the claimed invention by further including an inclined slit extending from the upper edge of the back portion of the bag all the way to the lower edge of the aperture. In sharp contrast, the bag recited in claim 1 includes an aperture in the back panel with "the back panel having a continuous perimeter surrounding the aperture." Thus, the invention recited in claim 1 does not include any slit or perforation in an area surrounding the aperture.

The bag in Kroemer is intended for manual removal from a horizontally oriented spindle. The bag removal is accomplished by the user grasping "any particular bag by the bottom 17 thereof and pull the same from the spindle." (See page 2, lines 9-12.) The approach to bag design as suggested by Kroemer does not operate satisfactorily in an automated environment where mechanical devices grasp the bag for removal from a spindle. Some automated devices mechanically grasp a bag for removal while other mechanical devices may use a vacuum-operated device to engage a bag and cause its removal from a spindle. In either situation, the force applied to the bag would cause premature tearing of the slit described by Kroemer thus causing the bag to fall before it is securely grasped resulting in an undesirable

jamming of the automated machinery. In contrast, the bag recited in claim 1 provides a solid area surrounding the aperture to provide the strength and support required of a bag for use in an automated process. Only after the bag is securely engaged is removal from the spindle attempted. Thus, the bag recited in claim 1 is suitable for automated operation whereas the bag disclosed in Kroemer is clearly unsuitable for such automated processing. Accordingly, claim 1 is clearly allowable over the cited references.

In addition to the direct arguments regarding non-obviousness of the claimed invention, the applicants offer strong secondary indicia of non-obviousness. Specifically, there has been a long-felt need for the present invention. Numerous attempts have been made to automate the bagging process with varying degrees of success. However, prior to the introduction of the claimed invention, no automated process was found suitable for operation with bale bags. It is well known that the recognition of need and difficulties encountered by those skilled in the field are classical indicia of non-obviousness. *In re* Dow Chemical Co., 837 F.2d 469 (Fed. Cir. 1988). Furthermore, the claimed product has been widely copied throughout the industry. Prior to the introduction of the claimed invention, no bale bags contained apertures such as recited in claim 1. Since the introduction of the bale bag, such as that recited in claim 1, it is believed that more than half the bale bags currently produced contain such an aperture. Even though the device of Kroemer was known and available in the public domain, individuals have chosen to copy the claimed invention rather than the product available in the public domain. Such copying indicates that the device described in Kroemer will not operate in an automated environment. Copying of a claimed invention rather than one in the public domain is indicative of non-obviousness. (Wind Surfing International, Inc. v. AMF, Inc., 782 F.2d 995 (Fed. Cir. 1986). The long-felt need and quick acceptance of the invention in the industry as evidenced by copying is strong secondary indicia of non-obviousness. Accordingly, claim 1 is allowable over the cited references.

Claims 3-5 and 7-11 are also allowable in view of this fact that they depend from claim 1, and further in due of the recitation in each of those claims. For example, claims 8-10 provide specific dimensions of a heavy shipping bag, sometimes referred to as a "bale" bag, which is used for shipping produce. At the time that Kroemer issued, such bags were never used for shipping. Kroemer is intended for use in a retail setting where an individual manually grasps

a single bag and removes it for loading groceries or other retail items. The bag in Kroemer is not suitable for shipping and does not suggest a bag, such as recited in claims 8-10, for use in shipping. The bag recited in claims 8-10 is clearly sized for non-consumer applications, such as shipping.

Claims 12 is a method claim for manufacturing a bag for use with an automated bag-filling apparatus. Claim 12 recites *inter alia* placing an aperture in the back panel with "the aperture being placed in a portion of the back panel having a continuous perimeter surrounding the aperture." As discussed above with respect to claim 1, Kroemer does not teach or suggest such an arrangement. Indeed, Kroemer teaches away from the claimed invention by introducing a slit extending from the top of the back portion all the way to the bottom of the aperture to permit the easy release of the bag. As discussed above, such an arrangement does not work in an automated bag filling apparatus. The slit in the bag described in Kroemer would prematurely release from a spindle in an automated process thus losing bags and possibly jamming the machinery. Kroemer does not suggest any technique for manufacturing a bale bag suitable for use in an automated process. Accordingly, claim 12 is allowable over the cited references.

In addition to the direct arguments as to non-obviousness of claim 12, the applicants further rely on the strong secondary indicia of non-obviousness discussed above with the respect to claim 1. That is, the long-felt need and ready acceptance in the industry as evidenced by copying are strong indicia of non-obviousness. Accordingly, claim 12 is allowable over the cited references for the direct reasons cited above as well as the secondary indicia of non-obviousness. Claims 14, 15, 16 and 18 are also allowable in view of the fact that they depend from claim 12, and further in view of the recitation in each of those claims.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version With Markings to Show Changes Made.**"

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. If questions remain regarding the present application, the Examiner is invited to contact the undersigned at (206) 628-7640.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claims 1 and 12 have been amended as follows:

1. (Amended) A bag for use with an automated bag-filling apparatus, comprising:

elongated front and back panels;

elongated left and right side panels adjoining the front and back panels;

a closed bottom panel joining the front and back panels with the left and right side panels;

an open top portion;

an aperture in the back panel proximate the top portion with the back panel having a continuous perimeter surrounding the aperture; and

a cut-away portion in the front panel proximate the top portion to expose the aperture wherein the aperture is in the back panel only.

12. (Amended) A method of manufacturing a bag for use with an automated bag-filling apparatus, comprising:

folding a piece of paper having elongated first and second free end portions to form elongated front and back panels and elongated left and right side panels adjoining the front and back panels;

forming left, right, front and back flaps by cutting a portion of the folded paper at a first end of the left, right, front and back panels at the folds between the left, right, front and back panels;

coupling the elongated free end portions to each other;

folding the left and right side flaps toward each other;

folding front and back flaps toward each other and over the left and right side flaps to form a bottom panel of the bag;

sealing the left, right, front and back flaps;

placing an aperture in the back panel at a second end opposite the first end, the aperture being placed in a portion of the back panel having a continuous perimeter surrounding the aperture; and

removing a portion in the front panel proximate the top portion to expose the aperture wherein the aperture is in the back panel only.

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